

## CHAPTER 38 PROTESTS, CLAIMS, AND DISPUTES

Secs.	
3800	Protests
3801	Contract Disputes
3802	District Claims Against Contractors
3803	Claims Against the District
3804	Claims Filed with the Director
3805	Informal Hearings on Claims
3806	Decision of the Director
3899	Definitions

### 3800 PROTESTS

3800.1 In accordance with the provisions of §903 of the District of Columbia Procurement Practices Act of 1985 (the "Act"), D.C. Code §1-1189.3, all protests shall be filed with the District of Columbia Contract Appeals Board (which has original jurisdiction to decide all protests of solicitations or awards), in accordance with chapter 1 of this title.

3800.2 Each solicitation issued by the District shall inform prospective bidders or offerors that protests must be filed in accordance with the provisions of §908 of the Act, D.C. Code §1-1189.8 (1981) and the rules of the Contract Appeals Board set forth in chapter 3 of this title.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is the District of Columbia Procurement Practices Act of 1985, D.C. Law 6-85, as amended, D.C. Code §1-1181.1 *et seq.* (1981).

**SOURCE:** Final Rulemaking published at 35 DCR 1708 (February 26, 1988).

### 3801 CONTRACT DISPUTES

3801.1 District agencies shall attempt to resolve all disputes arising under or relating to contracts by mutual agreement after informal discussions between the contractor and the contracting officer.

3801.2 Each District contract shall contain a disputes clause, approved by the Director, that provides for resolution of disputes in accordance with the provisions of this chapter.

3801.3 Any dispute arising under or relating to a contract which is not resolved by informal discussions between the contracting officer and the contractor pursuant to §3800.1 may be treated as a claim and pursued under the appropriate provisions of the Act and this chapter.

3801.4 Claims by the District against a contractor shall be filed with the Director in accordance with §803 of the Act, D.C. Code §1-1188.3 (1981) and §3802 of this chapter.

- 3801.5 Claims by a contractor against the District shall be filed initially in accordance with the provisions of §3803 of this chapter.

**SOURCE:** Final Rulemaking published at 35 DCR 1708 (February 26, 1988).

**3802 DISTRICT CLAIMS AGAINST CONTRACTORS**

- 3802.1 If the contracting officer is unable to resolve a dispute arising under or relating to a contract with a contractor, and the dispute involves a claim by the District against the contractor, the contracting officer shall file a written claim with the Director.

- 3802.2 The requirement for filing a claim under this section shall not apply to any penalty or forfeiture under §803(a)(3) of the Act, D.C. Code §1-1188.3(a)(3) (1981) or to any situation where the contracting officer has specific authority under the Act or this title to delay, suspend, or withhold contract payments. An aggrieved contractor may initiate a claim against the District in these situations in accordance with §3803 of this chapter.

- 3802.3 A claim filed with the Director by a contracting officer shall be in writing and shall include the following:

- (a) A description of the claim and the amount in dispute;
- (b) A copy of the contract and pertinent plans, specifications, modifications, supplemental agreements, addenda, change orders, other exhibits, correspondence between the District and the contractor, and any other data material to the claim;
- (c) A brief description of the status of performance of the contract and the contracting officer's efforts to resolve the dispute prior to filing the claim; and
- (d) The contracting officer's recommendation for action by the Director.

- 3802.4 At the same time the claim is filed, the contracting officer shall deliver or mail by certified mail, return receipt requested, to the contractor a copy of the claim filed with the Director.

- 3802.5 The contracting officer shall submit the complete contract file to the Director within ten (10) calendar days after filing the claim.

**SOURCE:** Final Rulemaking published at 35 DCR 1708 (February 26, 1988).

**3803 CLAIMS AGAINST THE DISTRICT**

- 3803.1 Contractors shall attempt to resolve all disputes by discussion and agreement with the contracting officer before filing a written claim.

- 3803.2 If a contractor is unable to resolve a dispute arising under or relating to a contract through informal discussions, the contractor may file a written claim with the contracting officer in accordance with this section.



- 3803.3 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the contracting officer, and shall contain at least the following:
- (a) A description of the claim and the amount in dispute;
  - (b) Any data or other information in support of the claim;
  - (c) A brief description of the contractor's efforts to resolve the dispute prior to filing the claim; and
  - (d) The contractor's request for relief or other action by the contracting officer.
- 3803.4 The contracting officer may meet with the contractor in a further attempt to resolve the claim by agreement.
- 3803.5 If the claim is not resolved by mutual agreement, the contracting officer shall issue a written decision on the claim within sixty (60) calendar days after the receipt of the claim. The contracting officer's written decision shall do the following:
- (a) Grant or deny the contractor's claim, in whole or in part;
  - (b) Give the reasons for the contracting officer's decision;
  - (c) Inform the contractor of the right to seek further redress by requesting an informal hearing and decision by the Director;
  - (d) Include the information specified in §3806.7(a), (b), (c), and (e); and
  - (e) Specifically indicate that the written document is the contracting officer's final decision.
- 3803.6 The contracting officer's decision shall be delivered or mailed by certified mail, return receipt requested, to the contractor, and a copy shall be maintained in the contract file.

**SOURCE:** Final Rulemaking published at 35 DCR 1709 (February 26, 1988).

#### **3804 CLAIMS FILED WITH THE DIRECTOR**

- 3804.1 If a contractor's claim against the District is not resolved to the satisfaction of the contractor under §3803, the contractor may file the claim with the Director within sixty (60) calendar days after either of the following:
- (a) The receipt of the contracting officer's written decision; or
  - (b) Ten (10) calendar days after the expiration of the time for a decision by the contracting officer under §3803.5.
- 3804.2 The contractor's claim shall be in writing, shall be delivered in person or mailed by certified mail, return receipt requested, to the Director, and shall contain at least the following:

- (a) A description of the claim and the amount in dispute;
- (b) Any data or other information in support of the claim;
- (c) A copy of the contracting officer's written decision or a statement that no written decision was received; and
- (e) The contractor's request for relief.

**SOURCE:** Final Rulemaking published at 35 DCR 1710 (February 26, 1988).

### **3805 INFORMAL HEARINGS ON CLAIMS**

- 3805.1 An informal hearing shall be conducted in accordance with this section on all claims filed with the Director pursuant to §§3802 or 3803.
- 3805.2 The Director may conduct the informal hearing or may appoint a Claims Officer to conduct the hearing. The Claims Officer shall be an employee of the Department of Administrative Services.
- 3805.5 The hearing shall be conducted as soon as practicable after the claim is received. In any event, the informal hearing shall be held in sufficient time to meet the deadline for a final determination on the claim under §3807.
- 3805.6 The Director shall give the contractor and the contracting officer at least fifteen (15) calendar days notice of the time and place scheduled for the informal hearing. The notice shall be in writing by certified mail, return receipt requested.
- 3805.7 The contractor may be accompanied or represented at the informal hearing by legal counsel or other person chosen by the contractor.
- 3805.6 The Director or claims officer shall close the informal hearing to the public during any portion of the hearing that proprietary information is presented or discussed, upon request of the contractor,
- 3805.7 The Director or Claims Officer may continue the informal hearing to a later date and time at the request of either party for cause or because of the excessive length of the hearing.

**SOURCE:** Final Rulemaking published at 35 DCR 1711 (February 26, 1988).

### **3806 DECISION OF THE DIRECTOR**

- 3806.1 If, because of the amount or complexity of the claim, the Director deems it to be in the best interests of the District, the Director may require informal, non-binding mediation between the parties before issuing a final decision. The Director shall appoint one (1) or more individuals who have not participated substantially in the matter in dispute to act as mediators to assist in resolving the claim.
- 3806.2 If a Claims Officer conducts the hearing, the Claims Officer shall make a written recommendation to the Director.



- 3806.3 The final decision of the Director shall be based upon the contract file, other documents filed by the parties, and the testimony and evidence presented at the hearing, in accordance with applicable laws and regulations.
- 3806.4 The final decision of the Director shall be issued within the applicable deadline set forth in §805 of the Act, D.C. Code §1-1188.5 (1981), except as provided in §3806.5. These deadlines shall also apply to decisions on claims filed by the District. For purpose of §805 of the Act and this section, the time periods set forth in the Act shall be deemed to be calendar days.
- 3806.5 In accordance with §§805(b) and (c) of the Act, D.C. Code §1-1188.5 (1981), the Director may extend the statutory deadline for issuing a final decision on a claim by issuing a written notice of extension based on either of the following:
- (a) The consent of both parties to an extension of the deadline for a specific period; or
  - (b) A determination by the Director that additional time is required due to compelling reasons stated in writing in the notice.
- 3806.6 When the statutory deadline is extended by the Director under §3806.5(b), the contractor may file an appeal with the Contract Appeals Board based on presumption of denial of the claim if a decision has not been issued within sixty (60) calendar days after the expiration of the applicable statutory deadline under §3806.4.
- 3806.7 The final written decision of the Director shall include the following:
- (a) A description of the claim or dispute;
  - (b) Reference to the pertinent contract terms;
  - (c) A statement of the factual areas of agreement and disagreement;
  - (d) A determination granting or denying the claim, in whole or in part, with the reasons for the determination;
  - (e) If all or any part of the claim is determined to be valid, a determination of the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted; and
  - (f) A notice that the contractor may appeal the decision to the Contract Appeals Board.
- 3806.8 The Director shall deliver or mail (by certified mail, return receipt requested) a copy of the final decision to the contractor, and shall provide a copy to the contracting officer for inclusion in the contract file.

**SOURCE:** Final Rulemaking published at 35 DCR 1712 (February 26, 1988).

**3899        DEFINITIONS**

3899.1        When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Claim** - a written demand or written assertion by the District or a contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

**Director** - the Director of the Department of Administrative Services.

**Proprietary information** - information, including a formula, patterns, compilation, program, device, method, technique, or process that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**SOURCE:** Final Rulemaking published at 35 DCR 1713 (February 26, 1988).